

Parliament Adopts New Divorce Laws For South Africa

By Naseeba Sadak

On the 1st of November 2023, the Portfolio Committee of Justice and Correctional Services adopted the Divorce Amendment Bill, which specifically relates to Muslim marriages.

The Bill stems from a court judgement in Women's Legal Centre Trust v President of the Republic of South Africa and Others [2022] ZACC 23 in which the Constitutional Court recognised the need for and importance of protecting Muslim women in and children of Muslim marriages, particularly on the dissolution of a Muslim marriage. The non-recognition of Muslim marriages in civil law has the effect that a person married in terms of Islamic law only has no right to approach a court of law for a decree of divorce.

The bill seeks to address the above with the following inclusions:

1. The bill inserts a definition of a Muslim marriage.
2. The bill provides for the protection and to safeguard the interests of dependent and minor children of a Muslim marriage.
3. The bill provides for the redistribution of assets on the dissolution of a Muslim marriage.
4. The bill provides for the forfeiture of patrimonial benefits of a Muslim marriage. Notably, the Bill allows people in Muslim marriages to get divorced in terms of the civil law. It does not constitute or replace an Islamic divorce. Persons who are in Muslim marriages and wish to be granted a religious divorce will still need to follow Islamic law. This amendment is seen as a victory for Muslims in South Africa as it protects women and children of Muslim marriages, particularly on the dissolution of a Muslim marriage.



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